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RECENT IMPORTANT DECISIONS

CRIMINAL LAW—DIRECTED VERDICT OF ACQUITTAL—The accused was convicted of crime. Error was assigned upon the refusal of the court to direct a verdict of not guilty. *Held*, that a motion to direct a verdict of acquittal should never be entertained. *People v. Zurek* (Ill. 1917), 115 N. E. 644.

Inasmuch as the court also ruled that the verdict of guilty was not contrary to the evidence, that part of the decision touching upon the policy of directing a verdict of acquittal was probably not necessary to the decision. The point was, however, considered by the court of review and a definite policy of practice was laid down. The great weight of authority supports the doctrine that a court cannot instruct a jury in a criminal case to return a verdict of guilty. See 16 COL. L. REV. 594 and note to Ann. Cas. 1916A 1241. There are a few cases which uphold the opposite view. *Paxton v. State*, 114 Ark. 393, 170 S. W. 80, Ann. Cas. 1916A 1239; *People v. Worges*, 176 Mich. 685, 142 N. W. 1100; *Commonwealth v. Brown*, 28 Pa. Sup. Ct. 296. The Illinois court declared itself in favor of the orthodox rule, and apparently justified its policy of not allowing directed verdicts of acquittal on the ground that a verdict of acquittal should not be directed when a verdict of guilty could not be so directed,—the end sought apparently being a mutuality of remedy as between the state and the defendant. This conclusion, however, does not follow, for courts refuse to direct a verdict of guilty because such action is held to interfere with the accused's right to a jury trial, while there is no such objection to ordering a verdict of acquittal. Further, a judge can set aside a verdict of guilty when it is contrary to the evidence, and can continue to do so indefinitely, even though he cannot set aside a verdict of acquittal, and it is submitted that a trial court should have the power and duty to direct a verdict of not guilty in the first instance rather than to allow a series of new trials. The theory of mutuality breaks down, even in Illinois, so far as respects the power to set aside a verdict, and a corresponding inequality as regards the power to direct a verdict is certainly not unreasonable or anomalous. This view is supported by the authorities. *State v. Trove*, 1 Ind. App. 553, 27 N. E. 878; *State v. Brown*, 72 N. J. L. 354, 60 Atl. 1117; *Murphy v. State*, 124 Wis. 635, 102 N. W. 1087; *People v. Ledwon*, 153 N. Y. 10, 46 N. E. 1046.

DIVORCE—CUSTODY OF CHILDREN IN CASE OF DENIAL OF DIVORCE.—The plaintiff sued for divorce from her husband on the ground of cruelty. The divorce was denied; but as the parties were not living together, the court gave the plaintiff custody of the three children. The Divorce Statute provided that although decree for separation * * * be not made the court may make decree for the support of the wife and children. *Held*, that under this statute the court, though denying a divorce to the wife, may award her the custody of the children. *Jacobs v. Jacobs* (Minn. 1917), 161 N. W. 525.

The cases are not in accord upon the question decided in the principal case. In some of the states there are statutes dealing with this question and similar to the statute in the principal case and in others there are not. The statute mentioned above was copied from the New York statute, but the New York cases reach a different conclusion. The earlier New York statute did not authorize a granting of custody of the children when there was no decree for divorce and separation, and the court held that the intent of the statute above, passed later, was merely to authorize granting of custody in cases where the wife had statutory grounds sufficient to get a separation but had waived them or condoned the offense. *Davis v. Davis*, 75 N. Y. 221; *Atwater v. Atwater*, 36 How. Prac. 431; *Davis v. Davis*, 1 Hun 444; *Douglas v. Douglas*, 5 Hun 140; *Robinson v. Robinson*, 131 N. Y. Supp. 260. In other states where the statute is similar the right to a decree of custody has been upheld. *Cornelius v. Cornelius*, 31 Ala. 479; *Johnson v. Johnson*, 57 Kan. 343; in *Re Cooper*, 86 Kan. 573. In *Anderson v. Anderson*, 124 Cal. 48, maintenance was given a wife for herself and allowance for support of her minor child. But see *Brenot v. Brenot*, 102 Cal. 294. Other cases granting custody, where no statute was mentioned are: *Knoll v. Knoll*, 114 La. 703; *Horton v. Horton*, 75 Ark. 22; *Hoskins v. Hoskins*, 28 Ky. Law Rep. 435. Contra, *Garrett v. Garrett*, 114 Ia. 439; *Thomas v. Thomas*, 250 Ill. 354; *King v. King*, 42 Mo. App. 454. It is settled that when the husband and wife have separated and are living apart the court may determine which parent shall have the custody of the children in habeas corpus proceeding. The instant case contains an exhaustive discussion of the authorities and seems to have slightly the weight of authority with it.

EVIDENCE—BLOODHOUNDS.—Appellant was tried and convicted of crime. At the trial testimony as to the conduct of a bloodhound was offered by the state as evidence of the accused's guilt, and was rejected as incompetent and inadmissible. In spite of the ruling, some evidence of this kind was introduced incidentally in proving other facts. The appellant's requested instruction to the effect that evidence as to the bloodhounds should not be considered in determining his guilt was refused, and later a motion for a new trial was overruled. Held, that a new trial should be granted for error in not giving the instruction requested. *Ruse v. State* (Ind. 1917), 115 N. E. 778.

The decision in the principal case, holding that bloodhound evidence is incompetent and inadmissible, is supported by few very recent cases. *Peo-ple v. Pfanschmidt*, 262 Ill. 411, 104 N. E. 804, Ann. Cas. 1915A 1171; *Stout v. State*, 174 Ind. 395, 92 N. E. 161, Ann. Cas. 1912D 37; *Brott v. State*, 70 Neb. 395, 97 N. W. 593, 63 L. R. A. 789. For a discussion of "the competency of the conduct of bloodhounds as evidence in criminal cases" see 2 MICH. L. REV. 402. The great majority of cases are agreed in holding that upon a proper foundation being first laid as to the training, testing, and experience of a dog in trailing human beings, evidence is admissible as to his conduct, actions, and doings while following the trial of one accused of